

Senate Bill No. 97

(By Senator Sypolt)

[Introduced January 11, 2012; referred to the Committee on
 Energy, Industry and Mining; and then to the Committee on the
 Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
 adding thereto a new article, designated §22-29-1, §22-29-2,
 §22-29-3 and §22-29-4, all relating to creating the Intrastate
 Coal and Use Act; establishing that the environmental
 regulation of coal and certain coal products mined and used
 within the state are exclusively regulated by the West
 Virginia Department of Environmental Protection; stating
 legislative authority; and defining terms.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
 by adding thereto a new article, designated §22-29-1, §22-29-2,
 §22-29-3 and §22-29-4, all to read as follows:

ARTICLE 29. ENVIRONMENTAL REGULATION OF COAL MINED AND USED WITHIN

1 **THE STATE.**

2 **§22-29-1. Short title.**

3 This article may be cited as the "Intrastate Coal and Use Act"

4 **§22-29-2. Authority.**

5 The Legislature declares that the authority for this article
6 is as follows:

7 (1) The Tenth Amendment to the United States Constitution
8 guarantees to the states and their people all powers not granted to
9 the federal government elsewhere in the Constitution and reserves
10 to the state and people of West Virginia certain powers as they
11 were understood at the time that West Virginia was admitted to
12 statehood in 1863. The guaranty of those powers is a matter of
13 contract between the state and people of West Virginia and the
14 United States as of the time that the compact with the United
15 States was agreed upon and adopted by West Virginia and the United
16 States in 1863.

17 (2) The Ninth Amendment to the United States Constitution
18 guarantees to the people rights not granted in the Constitution and
19 reserves to the people of West Virginia certain rights as they were
20 understood at the time that West Virginia was admitted to statehood
21 in 1863. The guaranty of those rights is a matter of contract
22 between the state and people of West Virginia and the United States
23 as of the time that the compact with the United States was agreed

1 upon and adopted by West Virginia and the United States in 1863.

2 (3) Section two, Article I of the West Virginia Constitution,
3 states: "The government of the United States is a government of
4 enumerated powers, and all powers not delegated to it, nor
5 inhibited to the states, are reserved to the states or to the
6 people thereof." Specifically enumerated among those "powers so
7 reserved to the states is the exclusive regulation of their own
8 internal government and police; and it is the high and solemn duty
9 of the several departments of government, created by this
10 Constitution, to guard and protect the people of this state from
11 all encroachments upon the rights so reserved."

12 (4) The regulation of intrastate commerce, including the
13 natural environment as affected by intrastate business, is vested
14 in the states under the Ninth and Tenth Amendments to the United
15 States Constitution and is specifically retained by the State of
16 West Virginia according to section 2, article I of the West
17 Virginia Constitution.

18 **§22-29-3. Definitions.**

19 As used in this article, the following definitions apply:

20 (1) "Borders of West Virginia" means the boundaries of the
21 State of West Virginia described in section 1, article II of the
22 West Virginia Constitution.

23 (2) The term "coal mine" means those operations removing coal

1 from a coal seam or seams, whether aboveground or underground.

2 (3) "Chemically altered coal product" means any product
3 derived principally from coal, including, but not limited to, coke
4 or liquid fuels derived from coal by any process.

5 **§22-29-4. Requirements.**

6 (a) In light of the above findings, environmental regulation
7 in West Virginia for all purposes of regulating business activity
8 performed in West Virginia, when the products of such business
9 activities are held, maintained, or retained within the borders of
10 West Virginia, is the principal responsibility of the West Virginia
11 Department of Environmental Protection.

12 (b) Any West Virginia coal mine producing coal which is used
13 commercially or privately in West Virginia and which is consumed or
14 otherwise remains within the borders of West Virginia and any West
15 Virginia facility producing chemically altered coal products used
16 commercially or privately in West Virginia which remain within the
17 borders of West Virginia shall be issued a permit to operate by the
18 West Virginia Department of Environmental Protection once the West
19 Virginia Department of Environmental Protection has certified that
20 the mine or facility is compliant with all applicable state and
21 federal laws or state and federal regulation.

22 (c) A sample from each vein of coal in a mine and a sample of
23 coal from each West Virginia source used at a facility producing a

1 chemically altered coal product shall be placed on record with the
2 West Virginia Department of Environmental Protection to verify the
3 West Virginia origin of the coal produced and used.

4 (d) The Legislature declares that the United States
5 Environmental Protection Agency, acting under the color of
6 authority of Congress to regulate interstate commerce, lacks the
7 authority to deny permits of operation to such coal mines and
8 facilities as the products of these mines and facilities have not
9 traveled in interstate commerce.

10 (e) This article applies to coal and to any chemically altered
11 coal product mined or produced in West Virginia from basic
12 materials which can be manufactured without the inclusion of any
13 significant components imported from another state.

14 (f) This article applies only to the issuance of a permit of
15 operation to a coal mine or facility producing chemically altered
16 coal products, the issuance of which permit is required by the
17 Clean Water Act or by another equivalent state or federal statute
18 or regulation. Nothing in this section shall be construed to limit
19 the effect of any other state or federal statute or regulation.

NOTE: The purpose of this bill is to create the Intrastate Coal and Use Act. The bill establishes that the environmental regulation of coal and certain coal products mined and used within the state are exclusively regulated by the West Virginia Department of Environmental Protection. The bill states the legislative

authority and defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.